

**Letter of Findings: 01-20140559
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was required to file 2011 Indiana individual income tax return because he was an Indiana resident and received 1099-MISC income which was subject to Indiana income tax. Individual was responsible for the negligence penalty because he failed to affirmatively establish reasonable cause for penalty abatement.

ISSUES

I. Indiana Individual Income Tax - Imposition: Non-filer.

Authority: 11 U.S.C. 523; IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-3-3; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); R.I. Gen Laws § 44-30-32 (2005).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana resident, who did not file his Indiana income tax returns since 1998. For the tax year 2011, based on the best information available, the Indiana Department of Revenue ("Department") determined that Taxpayer received 1099-MISC income, in the amount of \$92,910, which was subject to Indiana income tax. Taxpayer did not file his Indiana income tax return and pay the income tax that was due. The Department thus assessed Taxpayer income tax, interest, and penalty based on the best information available.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Imposition: Non-filer.

DISCUSSION

The Department found that Taxpayer is an Indiana resident who received 1099-MISC income but did not file his 2011 Indiana income tax return and pay the tax due. The Department thus assessed Taxpayer Indiana income tax, penalty, and interest.

Taxpayer did not dispute that he has been an Indiana resident. Rather, Taxpayer contended that he did not owe any Indiana income tax for the tax year 2011 because he had filed Chapter Seven bankruptcy. Taxpayer asserted that pursuant to the Bankruptcy Court order ("Order"), he did not owe any Indiana income tax because all of his debts were extinguished. Taxpayer also argued that he received the 1099-MISC income which was payment for

contract work he performed in the state of Rhode Island during the fall of 2011.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). The issue is whether Taxpayer meets the burden of proof demonstrating that the Department's proposed assessment was incorrect.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

In this instance, Taxpayer did not dispute that he was an Indiana resident, that he claimed a homestead exemption on his Indiana house, which was foreclosed at a sheriff sale in 2012, and that he filed bankruptcy in the federal court in Indiana. Rather, Taxpayer claimed that he did not owe Indiana income tax for the tax year 2011 because the tax liability was discharged by an Order issued by the United States Bankruptcy Court, Northern District of Indiana ("Order"). Taxpayer also maintained that he received the \$92,910 payment as a result of the work he performed in Rhode Island. Thus, Taxpayer argued that he did not owe Indiana income tax. To support his protest, Taxpayer provided a summary of explanation and a copy of the Order.

Upon review, however, Taxpayer is mistaken. First, Taxpayer's supporting documents showed that he filed bankruptcy in August 2011 and the Order was issued November 30, 2011. However, the Department records showed that Taxpayer had not filed his Indiana income tax returns since 1998. Without properly and timely filed Indiana income tax returns, Taxpayer's income tax liability is not dischargeable under 11 U.S.C. § 523(a)(1)(B)(i) (stating that "[a] discharge under section 727 . . . does not discharge an individual debtor from any debt . . . for a tax . . . with respect to which a return, or equivalent report . . . was not filed . . ."). Even if assuming that Taxpayer indeed properly filed his income tax return for the tax year 2011, the 2011 return was due April 17, 2012. Taxpayer's income tax liability which incurred in 2012 is a post-bankruptcy-petition liability and is not dischargeable. In short, Taxpayer remains liable for the Indiana income tax regardless of his bankruptcy petition in 2011.

Additionally, Taxpayer contended that the payment of \$92,910 was for the work he provided in Rhode Island and the State of Rhode Island has no state income tax. Upon review, however, Taxpayer is mistaken. In fact, the State of Rhode Island similar to Indiana also imposes state income tax on a nonresident that has income derived from or connected with Rhode Island sources. See R.I. Gen Laws § 44-30-32 (2005). Taxpayer did not provide any supporting documents to show that he filed the Rhode Island income tax on this 1099-MISC income. Nor did Taxpayer submit any records to substantiate that the payment of \$92,910 was to compensate for the work he performed in Rhode Island. Thus, Taxpayer's argument must fail.

Even if Taxpayer could demonstrate that he had paid the income tax to Rhode Island because this 1099-MISC income derived from or connected with Rhode Island sources, Taxpayer would only be allowed a credit for the tax paid. IC § 6-3-3-3(a). As an Indiana resident, all of Taxpayer's income regardless of its sources was subject to Indiana income tax under IC § 6-3-2-1.

Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met his burden demonstrating that the proposed assessment was wrong. In short, the Department properly determined that, for the 2011 year, Taxpayer was Indiana resident and his 1099-MISC income in the amount of \$92,910 was subject to "Indiana" income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty when "the taxpayer affirmatively establishes that the failure . . . was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#)(c). The taxpayer "must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section." Id. The Department is mindful that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case."

Upon reviewing Taxpayer's documentation and his history of compliance, Taxpayer failed to affirmatively establish that his failure to file and to pay tax was not due to negligence.

FINDING

Taxpayer's protest of the negligence penalty is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2011 tax year is denied. Taxpayer's protest of the negligence penalty is also respectfully denied.

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